

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of	
	DECISION

PRELIMINARY RECITALS

Pursuant to a petition filed July 2, 2015, under Wis. Stat., §49.85(4), to review a decision by the Public Assistance Collection Unit (PACU) to intercept state tax refunds to recover a FoodShare (FS) overpayment, a hearing was held on July 22, 2015, by telephone.

The issue for determination is whether the Department correctly sought to intercept petitioner's tax refund to collect an FS overpayment.

PARTIES IN INTEREST: Petitioner:



Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, Wisconsin 53703

By:

Public Assistance Collection Unit P.O. Box 8939 Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES #) is a resident of Milwaukee County.
- 2. On January 22, 2014, Milwaukee Enrollment Services sent petitioner notices informing her that she, her husband, and her daughter were liable for an FS overpayment totaling \$6,160, claim nos.

 The notices were sent to all three at petitioner's address, the same address at which she currently resides. The notices included language informing the parties of the right to appeal and the deadlines for doing so.

- 3. A repayment agreement was sent to petitioner on February 4, 2014, followed by three dunning notices on March 4, April 2, and May 2, 2014, all to petitioner's current address.
- 4. On June 13, 2014, the PACU sent petitioner a notice informing her that it intended to intercept state tax refunds to recover the overpayment. That notice informed petitioner that she could appeal within 30 days. It also was sent to petitioner's current address.
- 5. The state intercepted tax refunds of the petitioner and her husband in 2015. At present the overpayment is repaid except for a balance due of \$278.
- 6. Petitioner filed this appeal on July 2, 2015.

DISCUSSION

Wis. Stat., §49.85(2)(a), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, FS, and Medical Assistance. The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(a).

The hearing right is described in Wis. Stat., §49.85(4)(a), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(a). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

The federal regulation concerning FS overpayments begins: "The State agency shall take action to establish a claim against any household that received an overissuance due to an inadvertent household or administrative error...." 7 C.F.R. §273.18(b). Once timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b).

Prior to intercepting a person's income tax refunds, a state agency must notify the person of the intent. The person can appeal the action within 30 days of the notice. Wis. Stat., §49.85(3)(a)2.

In this case the time to appeal the merits of the overpayment claim, and whether petitioner and her husband are liable, is long past. Petitioner testified that she does not remember seeing any of the notices sent to her, but in total there were a minimum of six different notices sent to petitioner's current address, all of which would have alerted her of the overpayment. I must conclude that the PACU appropriately used the tax intercepts to recover the overpayment. While it is evident that petitioner's daughter was the one responsible for the overpayment, petitioner's right to appeal ended when she missed the deadlines for doing so.

CONCLUSIONS OF LAW

Petitioner's appeal of a \$6,160 FS overpayment was untimely, and thus the agency may use all legal means, including tax intercepts, to recover it.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 27th day of July, 2015

\sBrian C. Schneider Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 27, 2015.

Public Assistance Collection Unit Public Assistance Collection Unit